

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 16, 2008 Session

DENZIL RUSS PARTIN, ET AL. v. CHARLES SCOTT, ET AL.

**Appeal from the Circuit Court for Campbell County
No. 13094 Jon Kerry Blackwood, Senior Judge**

No. E2007-02604-COA-R3-CV - FILED NOVEMBER 13, 2008

In January of 2002, Campbell County Sheriff Ron McClellan went to the home of Denzil and Mary Partin ("Plaintiffs") to arrest Denzil Partin after an order was entered revoking Denzil Partin's bail and a separate warrant had been issued for his arrest on new charges. Denzil Partin refused to cooperate with Sheriff McClellan and an armed standoff ensued. Both Plaintiffs eventually were arrested. Plaintiffs initially filed a lawsuit in the United States District Court for the Eastern District of Tennessee ("District Court"). Plaintiffs alleged several civil rights violations premised upon both federal and state law. Plaintiffs sued numerous defendants, all of whom filed properly supported motions for summary judgment. The District Court granted the motions for summary judgment after determining that the undisputed material facts showed that Plaintiffs' civil rights had not been violated. The District Court then dismissed the state law claims without prejudice after declining to exercise its supplemental jurisdiction. Plaintiff then re-filed the state law claims against the same litany of defendants. All of the defendants again filed properly supported motions for summary judgment. Among other things, the defendants claimed that the doctrine of collateral estoppel precluded Plaintiffs from proceeding with their state law claims. The Trial Court agreed and dismissed all of Plaintiffs' claims. Plaintiffs appeal, and we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Circuit Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Herbert S. Moncier, Knoxville, Tennessee, for the Appellants, Denzil Russ Partin and Mary Ava Partin.

John C. Duffy, Knoxville, Tennessee, for the Appellees Ron McClellan, Bobby Vann, and Campbell County.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael Moore, Solicitor General, and Rebecca Lyford, Assistant Attorney General, Nashville, Tennessee, for the Appellees Charles Scott, Robert Eckerman, Randy Nauman, Maurice Hobbs, Brad Lund, Gregory Brown, Denny Mitchell, Edward Cherry, Terry Botts, David Frost, Dennis Kent, and Robert Denney.

OPINION

Background

This lawsuit originally was filed in the United States District Court for the Eastern District of Tennessee. In that lawsuit, Plaintiffs brought numerous federal and pendent state law claims against these defendants. The District Court lawsuit concerned events that took place at Plaintiffs' house located in Campbell County, Tennessee, when several of the defendant officers went to arrest plaintiff Denzil Partin and an armed standoff ensued. Most of Plaintiffs' claims involve alleged civil rights violations. The District Court eventually granted the defendants' properly supported motions for summary judgment, and then dismissed the pendent state law claims without prejudice after declining to exercise supplemental jurisdiction. When the present lawsuit alleging only state law claims was filed in state court, all of the defendants again filed properly supported motions for summary judgment, which the Trial Court granted.¹

The primary issue on appeal involves whether the Trial Court correctly determined that the final judgment entered by the District Court operated to bar the present state law claims pursuant to the doctrine of collateral estoppel. Because our resolution of this broad issue necessarily involves a detailed examination of the District Court judgment, we will quote heavily from the extensive memorandum opinion of the District Court granting Defendants' motions for summary judgment, with all footnotes being in the original but renumbered. According to the memorandum opinion:

The plaintiffs claim that the defendants laid siege to their home, arrested the plaintiffs without warrants, and used excessive force to arrest the plaintiffs, all in violation of the plaintiffs' rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution. The plaintiffs further allege that the defendant agencies and supervisors failed to train, supervise and control their employees, resulting in the violations of the plaintiffs' civil rights. The plaintiffs also make

¹ The defendants in the present case include numerous officers or agents sued in their individual capacity. According to the complaint, the individual defendants are: (1) Charles Scott and Bob Denny, agents with the Tennessee Bureau of Investigation; (2) Lt. Robert Eckerman, Sgt. Maurice Hobbs, Trooper Randy Nauman, Trooper Gregory Brown, Trooper Edward Cherry, Trooper Denny Mitchell, Trooper Rocky Leonard, and Trooper Brad Lund, all of who are employed by the Tennessee Highway Patrol; (3) Campbell County Sheriff Ron McClellan; and (4) Chief Deputy Bobby Vann, Cpt. Lester Jackson, Officer David Frost, and Officers Kent and Botts, all of whom are employed by the Campbell County Sheriff's Department. Each of these defendants was a defendant in the District Court lawsuit. Where appropriate, all of the various defendants will be referred to collectively as "Defendants."

claim under 42 U.S.C. § 1983 for negligent employment and retention. Finally, the plaintiffs make state law claims for negligent failure to prevent the violations of the plaintiffs' civil rights, intentional battery, and loss of consortium....

The following facts are taken from the plaintiffs' complaint as well as the exhibits attached to the defendants' motions for summary judgment. On January 21, 2002, the judge of the Criminal Court for Campbell County, Tennessee, issued an order revoking the bail of the plaintiff Denzil Partin and his son, Courtney Partin. They had been granted bail after charges were filed against them for aggravated assault and carjacking. The affidavit in support of the motion to revoke the Partins' bail, signed by Charles Scott of the Tennessee Bureau of Investigation (TBI), stated that shots from a high-powered rifle were fired into the residence of an investigator for the Campbell County District Attorney's office on January 13, 2002. A confidential informant had told them that a man named Eric Goins told him that Goins was driving the truck from which Courtney Partin fired the shots. Further, the officer had information that the plaintiffs had hired Eric Goins to burn their house located in LaFollette, Tennessee. The house was ultimately destroyed by fire on January 18, 2002. Goins was paid for the arson job with a stolen dirt bike and promised some of the insurance proceeds. The confidential informant stated that he helped paint the stolen dirt bike.

Based on the court's order revoking the Partins' bail, defendant Sheriff McClellan called plaintiff Denzil Partin several times and asked him to turn himself in at the Sheriff's office. Denzil refused, telling the Sheriff that he was not going to jail and he had the firepower to back up his statement. On January 23, 2002, Sheriff McClellan and Scott went to the plaintiffs' home ... to attempt to arrest Denzil Partin. Sheriff McClellan walked partway up the driveway before Denzil came out on the front porch carrying what appeared to be a rifle. Sheriff McClellan stated in his affidavit that he asked Denzil to put down the gun, come off the porch, and surrender, but Denzil refused.

Since Denzil would not peaceably surrender, Sheriff McClellan decided to call the Tennessee Highway Patrol (THP) special operations unit to assist in the arrest. The special operations unit arrived at the Partin residence on January 24, 2002. A command post was set up on the road at the end of the Partins' driveway. The negotiator for the THP, David Frost, talked with Denzil most of the day on January 24th, but Denzil refused to surrender. Denzil told Frost that the only way he was coming out was "feet first." Denzil

told Frost that he wanted the officers to come up the driveway so there would [be] a shootout. Frost told Denzil that that was not going to happen. The negotiations were tape recorded.

At about 3:15 p.m. on January 24th, the officers were told that a felony arrest warrant for Denzil and Courtney Partin had been signed, charging them with arson and theft. Shortly thereafter, Denzil refused to talk with Frost anymore and as it was getting dark, Lt. Robert Eckerman of the THP ordered the officers to surround the house. He then ordered the deployment of one round of nonflammable, less-than-lethal tear gas in an effort to force Denzil from the house without a shootout. Denzil's response was to shoot into the woods in the direction from which the tear gas came.² Lt. Eckerman then ordered the deployment of another round of the same tear gas, with the same result.³ A third round was ordered, and this time there was no response.

After the third round of tear gas was sent into the Partins' home, Mrs. Partin called 911 and reported that her husband had shot himself and needed help.⁴ Lt. Eckerman was told of Mrs. Partin's call but did not send his officers to assist Denzil in case it was a trap. However, when Denzil came out onto his porch, some of the officers in the woods could see that he appeared injured (a head wound) and an ambulance was allowed to respond.

In the meantime, Mrs. Partin got in a truck and drove down the driveway to the road where the command post was set up. When she got to the road, the officers drew their weapons and ordered her to get out of the truck and kneel to the ground. She tried to tell them that her husband needed help because he had shot himself. She was handcuffed and taken to jail. The notes of the Campbell County Jail Security Checks show that Mrs. Partin was released about 24 hours after her arrest. On February 13, 2002, Mrs. Partin was arrested on the arson charges and held until March 1, 2002, when she was able to make her \$60,000 bond.

² Denzil says he fired into the ground.

³ Denzil Partin later pled guilty to the attempted second degree murder of Lt. Eckerman, and to aggravated assault on defendants Brown, Nauman, Cherry, Mitchell, Leonard, and Hobbs.

⁴ Sheriff McClellan stated in his affidavit that Mrs. Partin told him a few weeks later that her husband was running in the living room when he tripped and shot himself. Further, Mrs. Partin stated in her deposition that she was fairly certain [that] Denzil had shot himself, but that the officers "pushed him into it."

At his deposition, Denzil Partin stated that he believed that the law was going to kill him, and he believed this because they were all dressed in black.⁵ He also stated that he only shot his gun once, and that was after the first deployment of tear gas. Evidently, Denzil also contends that he was wounded when someone came in the back room of his house and fired two or three shots. All of the officers state in their affidavits, however, that they did not fire their weapons (other than tear gas guns) at any time on January 23rd or 24th.

All the officers deny entering the Partin home until after Denzil was taken away in an ambulance. Furthermore, the affidavits of the officers present at the scene show that officers went onto the plaintiff's property only three times before Denzil was taken away. First, during the negotiations it appeared that Denzil was going to give up, so Sheriff McClellan [and] Bobby Vann drove up the driveway to secure his arrest. Denzil came out on the porch with a rifle. He refused to come off the porch without his gun and told the officers to come closer. They refused. At the same time, Officer Vann saw Courtney Partin come out of the side of [the] house in a crouching position and holding a rifle. When Courtney realized that Officer Vann saw him, he went back in the house. The second time the officers went onto the property was after Denzil told the negotiator that Courtney was in the woods with a rifle. Two officers were sent into the woods to protect the command post on the road. The third time the officers went on the property was when Lt. Eckerman ordered his officers to surround the house and deploy the tear gas....

Under Rule 56 of the Federal Rules of Civil Procedure, a motion for summary judgment may be granted, "if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

* * *

The individual Campbell County and State of Tennessee defendants argue that they did nothing to violate the plaintiffs' civil rights. They argue that there is no genuine issue of material fact that there was probable cause to arrest both Denzil and Mary Partin, and

⁵ It appears that none of the Campbell County officers were wearing black. Officer Vann was wearing a dark blue uniform, and the other Campbell County officers were wearing tan and green uniforms.

there is no factual issue that the force used to arrest the plaintiffs was reasonable under the circumstances. The individual supervisors deny ... that they were ... responsible for training or that they ... [failed] to train the officers involved.

The plaintiffs' claims against the individual defendants

must be evaluated under the framework of qualified immunity. According to the doctrine of qualified immunity, "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Qualified immunity involves a two-step inquiry. First, the court must determine whether, based upon the applicable law, the facts viewed in the light most favorable to the plaintiffs show that a constitutional violation has occurred. If the court finds a constitutional violation, it must then consider whether the violation involved "clearly established constitutional rights of which a reasonable person would have known."

See Ewolski v. City of Brunswick, 287 F.3d 492, 500-501 (6th Cir. 2002) (internal citations omitted). Under the circumstances of this case, the court finds that the plaintiffs cannot demonstrate that their Fourth Amendment constitutional rights were violated by the individual defendants; thus, there is no need to consider whether the constitutional rights were clearly established....

[As to the plaintiffs' arrests, the court first finds] that there was sufficient probable cause to arrest Denzil Partin. There was a valid order of the Campbell County Criminal Court revoking Denzil's bail and ordering that Denzil Partin "be arrested forthwith by any law enforcement officer of this State and incarcerated in the Campbell County jail" Denzil and his son were out on bail on felony charges of assault and carjacking. In addition, late in the afternoon of ... January 24, 2002, an arrest warrant was signed for the arrest of Denzil and his son on felony theft and arson charges (the offenses underlying the bail revocation order). Thus, two Campbell County judicial officers had found that there was probable cause to arrest Denzil, and his arrest was not a violation of his constitutional rights.

Second, the court finds that there was probable cause to make a warrantless arrest of Mary Partin when she drove down the driveway. “Arrest without a warrant does not violate the Fourth Amendment if probable cause exists for the arresting officer’s belief that a suspect has violated or is violating the law.” *Criss v. City of Kent*, 867 F.2d 259, 262 (6th Cir. 1988). Probable cause is defined as the “‘facts and circumstances within the officer’s knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.’” *Id.* (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 37, 99 S.Ct. 2627, 2632, 61 L.Ed.2d 343 (1979)). A valid arrest based on probable cause is not vitiated if the suspect is later found innocent. *Id.*

In this case, the officers knew that Denzil and his son Courtney were armed and in the house. They had no information that Mrs. Partin was being held against her will and could not leave, so they did not know the level of her participation in the stand-off. She could easily have been one of the persons firing on the officers. When the truck came speeding down the hill, the officers did not know who was in the truck or whether any persons in the truck were armed. Based on these circumstances, the officers were justified in their belief that Mrs. Partin either had committed or was about to commit an offense. Her arrest was justified under the circumstances, and the court finds that there is no genuine issue of material fact that Mrs. Partin’s arrest did not violate her Fourth Amendment rights....

Next, the plaintiffs argue that their civil rights were violated when the officers used excessive force when taking them into custody. Denzil alleges that the officers severely injured him when they removed him from his home, and that the use of force was unjustified and excessive. In his rather incoherent deposition, Denzil stated that the “law” was going to kill him and that he wanted them to kill him because they “were going to anyway.” He believed this because they were dressed in black. He also stated that an officer fired two or three shots in the back room of his house. However, there is no evidence before the court that the shots allegedly fired by the officer dressed in black were the cause of the gunshot wound to the plaintiff’s head.⁶

⁶ Contrary to Denzil’s allegations, Mrs. Partin’s tape recorded 911 call indicates that she told the operator that her husband shot himself, the same story she told the officers at the time she was arrested. A few weeks later she told Sheriff McClellan that her husband had accidentally shot himself. Then, in her sworn deposition she stated that she believed her husband shot himself. Denzil’s statement is also contrary to all the officers’ sworn statements that none

(continued...)

However, assuming *arguendo* that Denzil's story is true; that an officer dressed in black shot him, Denzil would still not be able to make out an excessive force claim under the circumstances of this case. *See Criss*, 867 F.2d at 261 (the court must consider the facts and all reasonable inferences in the light most favorable to the nonmoving party). Assuming a THP officer did enter the Partin home before Denzil was shot, Denzil's statements and threats for two days as well as his actions, including the firing of his own weapon, allow a reasonable inference to be drawn that Denzil would have confronted the officer with a gun. Under these circumstances, the court finds that it would have been objectively reasonable for the officers to use the force necessary to subdue the plaintiff....

In addition, the court finds that the use of non-flammable, non-lethal tear gas to attempt to end the stand off and secure the arrest of Denzil Partin was objectively reasonable under the circumstances of the case. *See Ewolski*, 287 F.3d at 508 ("In light of [the decedent's] willingness to use deadly force against the police in resisting arrest, the use of non-deadly force such as tear gas ... was not excessive under any version of the facts before us."). Denzil was on bail for violent felonies, and while on bail he was allegedly involved in the theft of a dirt bike to use as payment for the arson of his house in LaFollette. Thus, he was considered a violent felon who needed to be taken into custody. In addition, he had repeatedly threatened the officers who came to arrest him and fired his weapon at least one time. The court finds that there is no genuine issue of material fact that the officers did not use excessive force when attempting to secure the arrest of Denzil Partin.

As to Mrs. Partin, the court finds that she also was not subjected to excessive force at the time of her arrest. To the extent that Mrs. Partin alleged excessive force because of the tear gas, the court's discussion above applies. Mrs. Partin also complains of her treatment when she was ordered out of her truck and told to get down on the ground in the rain. She was then handcuffed and eventually taken to the Campbell County jail. There is no evidence that any of the officers touched Mrs. Partin until she was handcuffed, and there is no allegation that the handcuffing harmed her in any way. Nothing about this encounter creates any issue of fact concerning whether the officers' actions were objectively reasonable.

⁶(...continued)

of them fired their weapons at any time on January 23rd or 24th, and none of them entered his home until after Denzil was taken away in an ambulance.

Mrs. Partin also alleged that she was held in the Campbell County jail “drunk tank” for two days in spite of jail officials knowing that she needed medical attention. The jail records, however, do not support this allegation. Although the records do not show when Mrs. Partin was taken to jail, presumably it was sometime on the evening of January 24th. The records do show that she was released at 7:00 p.m. on January 25th, no more than twenty-four hours later. She also claims that she was scheduled for a transfusion on the day of her arrest for chronic anemia, but nothing the officers did prevented her from keeping her scheduled appointment. She could have left the house at any time. She was not arrested until the late afternoon or evening of the 24th. The court finds that the evidence in the record before the court does not support Mrs. Partin’s allegation about her detention, and the Campbell County defendants are entitled to judgment as a matter of law....

The plaintiffs allege that defendants Scott (TBI), Eckerman and Hobbs (THP), and McClellan and Vann (Campbell County Sheriff’s Department) failed to train and supervise the officers involved in the stand off at the Partins’ home. Several of these defendants, however, were the only representatives of their agencies named as defendants in this lawsuit. Defendant Scott was the only TBI agent on the scene, and defendants, McClellan and Vann were the only Campbell County officers named as defendants in this lawsuit. Thus, any allegation of a failure to train or supervise against these defendants must fail. A supervisor cannot be held liable for failure to train officers who were not there or who were not accused of civil rights violations.

The plaintiffs also allege that Lt. Eckerman and Sgt. Hobbs failed to train and supervise the special operations unit officers involved in the arrest of the plaintiffs. A failure-to-train allegation necessarily implies that an employee did or did not do some act that resulted in a violation of the plaintiffs’ civil rights. Thus, the allegations against Lt. Eckerman and Sgt. Hobbs must also fail in light of the court’s finding that the plaintiffs’ Fourth Amendment rights were not violated by any of the officers involved in the stand off.

For these reasons, the court finds that the individual defendants are all entitled to judgment as a matter of law on the plaintiffs’ § 1983 claims against them....

The plaintiffs allege that Campbell County, the Campbell County Sheriff’s Department, and defendants McClellan, and Vann

sued in their official capacities failed to provide training, supervision and control over their employees and this failure resulted in the violations of the plaintiffs' civil rights.⁷ "If no constitutional violation by the individual defendants is established, the municipal defendants cannot be held liable under § 1983." *Watkins v. City of Battle Creek*, 273 F.3d 682, 687 (6th Cir. 2001) (citing *City of Los Angeles v. Heller*, 475 U.S. 796, 799, 106 S.Ct. 1571, 1573, 89 L.Ed.2d 806 (1986)). The court, having found that the plaintiffs cannot establish that their civil rights were violated, concludes that the § 1983 claims against the county defendants and county employees sued in the official capacities must be dismissed....

The court, having found that the plaintiffs' federal law civil rights claims must be dismissed, the court declines to consider the plaintiffs' state law claims. Therefore, pursuant to 28 U.S.C. § 1367(c)(3), the court will dismiss the plaintiffs' state law claims without prejudice.

No appeal was taken from the judgment of the District Court dismissing all of the federal claims against all Defendants. That judgment, therefore, is final.

When Plaintiffs re-filed their state law claims, they asserted claims for violations of their civil rights under Article I, Section 7, and Article I, Section 13 of the Tennessee Constitution⁸, as well as state law tort claims of assault and battery, false arrest and imprisonment, and trespass. All Defendants filed motions for summary judgment and submitted the same affidavits, etc., that were submitted to the District Court in support of the motions for summary judgment filed in that venue. Among other things, Defendants claimed that Plaintiffs were collaterally estopped from proceeding with the state law claims based on the factual findings made by the District Court.⁹

On October 19, 2007, the Trial Court entered an order granting the pending motions for summary judgment. The Trial Court found and held:

⁷ The plaintiffs also alleged that defendants Scott, Eckerman and Hobbs were liable in their official capacities for a failure to train. However, these defendants are state employees and the claims against them in their official capacities have already been dismissed.

⁸ Article I, Section 7 of the Tennessee Constitution is the state counterpart to the Fourth Amendment of the United States Constitution. Both of these constitutional provisions protect individuals against unreasonable searches and seizures. Article I, Section 13 of the Tennessee Constitution is the state counterpart to the federal prohibition against use of excessive force and provides that "no person arrested and confined in jail shall be treated with unnecessary rigor."

⁹ Plaintiffs also filed a claim against the State of Tennessee in the Claims Commission asserting several causes of action similar or identical to those alleged in the present case. On January 28, 2006, the Claims Commission entered an order dismissing all of Plaintiffs' claims against the State as the statute of limitations for all such claims had expired by the time the complaint was filed with the Claims Commission. In October of 2007, Plaintiffs non-suited some but not all of the individually named defendants who were employed by the State.

- (A) that Count I of the complaint [alleging state Constitutional violations] fails to state a claim upon which relief may be granted. *Bowden Bldg. Corp. v. Tennessee Real Estate Commission*, 15 S.W.3d 434, 446 (Tenn. Ct. App.);
- (B) that Count II of the complaint alleges an assault and battery against the Defendants; Count III alleges false imprisonment, and County IV alleges trespass by the Defendants;
- (C) that Plaintiffs filed a complaint against these Defendants in the United States District Court for the Eastern District of Tennessee at Knoxville [on] January 23, 2003. On February 15, 2005, that Court entered an order granting Defendants' Motion for Summary Judgment and dismissing Plaintiffs' complaint. The District Court found that there was probable cause to arrest both Plaintiffs; that excessive force was not used in taking the Plaintiffs into custody; that the record does not support Ms. Partins' allegation that she was held in the "drunk tank" for two days; and, that the officers had a valid order to arrest the Plaintiff Denzil Partin and therefore there was no trespass.
- (D) The Court finds that the issues present in this case have been adjudicated by the Order of the District Court;
- (E) that the District Court's Order is final in that no appeal was taken from that Order;
- (F) that the Plaintiffs are collaterally estopped from presenting those claims in this complaint; and
- (G) that the Motion filed by Plaintiffs to Amend the Complaint, Relief from Judgment and additional time for discovery are denied.

Whereupon, the Court grants Defendants' Motion for Summary Judgment and this case is dismissed with costs assessed against the Plaintiffs for which execution shall issue.

Plaintiffs appeal raising three issues. First, Plaintiffs claim the Trial Court erred when it determined that their state law claims were barred by the doctrine of collateral estoppel. Second, Plaintiffs claim that the Trial Court erred when it determined that they failed to state a claim upon which relief could be granted for a violation of Article I, Section 7, and Article I, Section 13 of the Tennessee Constitution. Third, Plaintiffs claim the Trial Court erred when it denied their Tenn. R.

Civ. P. 56 and 60 motions for relief from a prior order pertaining to their request for additional time to conduct discovery and respond to the motions for summary judgment.

Defendants submit that the Trial Court decided everything correctly when it granted their motions for summary judgment. Alternatively, Defendants argue that even if collateral estoppel does not bar the present claims, the undisputed material facts establish that they nonetheless were entitled to judgment as a matter of law. The defendants employed by the State of Tennessee further argue that any and all claims against them were waived pursuant to Tenn. Code Ann. § 9-8-307(b) when Plaintiffs filed a claim against the State in the Claims Commission arising out of the same acts at issue in the present lawsuit.

Discussion

In *Teter v. Republic Parking System, Inc.*, 181 S.W.3d 330 (Tenn. 2005), our Supreme Court reiterated the standards applicable when appellate courts are reviewing a motion for summary judgment. The Court stated:

The purpose of summary judgment is to resolve controlling issues of law rather than to find facts or resolve disputed issues of fact. *Bellamy v. Fed. Express Corp.*, 749 S.W.2d 31, 33 (Tenn. 1988). Summary judgment is appropriate only when the moving party demonstrates that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. See Tenn. R. Civ. P. 56.04; *Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000); *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). In reviewing the record, the appellate court must view all the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in favor of the non-moving party. *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000). And because this inquiry involves a question of law only, the standard of review is de novo with no presumption of correctness attached to the trial court's conclusions. See *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995).

Teter, 181 S.W.3d at 337.

Plaintiffs' first issue is their claim that the Trial Court erred when it determined that collateral estoppel barred their state law claims. A "question of whether collateral estoppel applies is a question of law" *Tareco Properties, Inc. v. Morriss*, No. M2002-02950-COA-R3-CV, 2004 WL 2636705, at *12 n.20 (Tenn. Ct. App. Nov. 18, 2004), *no appl. perm. appeal filed*. In *Beaty v. McGraw* this Court discussed the doctrine of collateral estoppel at length stating:

Collateral estoppel is an issue preclusion doctrine devised by the courts. See *Dickerson v. Godfrey*, 825 S.W.2d 692, 694 (Tenn. 1992); *Goeke v. Woods*, 777 S.W.2d 347, 349 (Tenn. 1989); *Morris*

v. Esmark Apparel, Inc., 832 S.W.2d 563, 565 (Tenn. Ct. App. 1991). Like other preclusion doctrines, its purposes are to conserve judicial resources, to relieve litigants from the cost and vexation of multiple lawsuits, and to encourage reliance on judicial decisions by preventing inconsistent decisions. *See Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414-15, 66 L.Ed.2d 308 (1980); *Disimone v. Browner*, 121 F.3d 1262, 1267 (9th Cir. 1997).

* * *

The party seeking to rely on the doctrine of collateral estoppel has the burden of proof. *See Dickerson v. Godfrey*, 825 S.W.2d at 695. To invoke the doctrine successfully, the party must demonstrate:

1. that the issue sought to be precluded is identical to the issue decided in the earlier suit;
2. that the issue sought to be precluded was actually litigated and decided on its merits in the earlier suit;
3. that the judgment in the earlier suit has become final;
4. that the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier suit; and
5. that the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier suit to litigate the issue now sought to be precluded.

Beaty v. McGraw, 15 S.W.3d 819, 824-25 (Tenn. Ct. App. 1998) (footnotes omitted).

The District Court unequivocally found that the undisputed material facts established that the officers had probable cause to arrest both Plaintiffs and that valid warrants for the arrest of Denzil Partin had been issued. Specifically, the District Court found that “two Campbell County judicial officers had found that there was probable cause to arrest Denzil, and his arrest was not a violation of his constitutional rights, ... and the court finds that there was probable cause to make a warrantless arrest of Mary Partin when she drove down the driveway.” The District Court also found that the undisputed material facts established that none of the officers used excessive force against either Plaintiff.

In the present case, the determination of whether Plaintiffs’ rights were violated under either Article I, Section 7 and/or Article I, Section 13 of the Tennessee Constitution involves the identical analysis undertaken by the District Court when it analyzed the federal constitutional claims;

i.e., whether Plaintiffs' rights were violated by an illegal search or seizure or whether excessive force/unnecessary rigor was used against Plaintiffs. These issues certainly were litigated in the District Court lawsuit and the judgment of the District Court was on the merits. The District Court judgment became final when no appeal was taken from the District Court's order. The parties in the present case are the same parties that were in the District Court lawsuit, and there is no legitimate dispute regarding whether Plaintiffs had a full and fair opportunity to litigate the federal constitutional issues in the District Court proceedings, including a determination by the District Court of the facts material to those issues.

We conclude that the judgment of the District Court wherein that court held that the undisputed material facts established that there was no violation of Plaintiffs' federal constitutional rights, i.e., no illegal search or seizure and no use of excessive force, operates to bar Plaintiffs' state constitutional claims in the present case which are premised on the exact same facts and resulting alleged violations. The Trial Court correctly granted all Defendants summary judgment on Plaintiffs' claims that their rights under the Tennessee Constitution were violated. Because the facts/issues decided by the District Court overwhelmingly establish that Plaintiffs' state constitutional rights were not violated, we need not decide the issue regarding whether Tennessee law permits a private cause of action for monetary damages based on a violation of state constitutional provisions.¹⁰

¹⁰ In *Parker v. Henderson County, Tennessee*, 450 F. Supp.2d 842, 856 (W.D. Tenn. 2006), the United States District Court for the Western District of Tennessee stated:

The Defendants maintain that the Plaintiff's state constitutional claims fail as a matter of law because the Tennessee courts do not recognize a private cause of action for violation of the Tennessee Constitution. In *Bowden Building Corporation v. Tennessee Real Estate Commission*, 15 S.W.3d 434 (Tenn. Ct. App. 1999), *app. denied* (Feb. 14, 2000), the Tennessee Court of Appeals noted that when a person's federal constitutional rights are violated, he can "maintain a private cause of action for damages against the federal officer, even though no statute expressly creates such a cause of action." *Bowden Bldg. Corp.*, 15 S.W.3d at 446 (citing *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 395-97, 91 S.Ct. 1999, 2004-05, 29 L.Ed.2d 619 (1971)). However, the court went on to state that "Tennessee ... has not recognized any such implied cause of action for damages based upon violations of the Tennessee Constitution." *Id.* (citations omitted). Similarly, in *Cline v. Rogers*, 87 F.3d 176 (6th Cir.), *cert. denied*, 519 U.S. 1008, 117 S.Ct. 510, 136 L.Ed.2d 400 (1996), the Sixth Circuit, analyzing Tennessee law, concluded that "[t]he plaintiff can state no claim of a state constitutional violation in this case because Tennessee does not recognize a private cause of action for violations of the Tennessee Constitution." *Cline*, 87 F.3d at 179 (citing *Lee v. Ladd*, 834 S.W.2d 323 (Tenn. Ct. App.), *app. denied*, (Tenn. 1992)); *see also Boling v. Gibson County*, No. 05-1129-T-AN, 2005 WL 1936299, at *2 (W.D. Tenn. Aug. 1, 2005) ("Tennessee does not recognize an implied private cause of action for alleged violations of the Tennessee Constitution.").... [B]ecause the Tennessee courts have not recognized a private right of action for violations of the state constitution, the Defendants' motion for summary judgment as to those claims is GRANTED.

Collateral estoppel also bars Plaintiffs' state law tort claims. Because there were express findings by the federal court that: (1) there were valid warrants issued for Denzil Partin's arrest; (2) probable cause existed to arrest both Plaintiffs; and (3) Mrs. Partin had been released in a timely manner following her arrest, as a matter of law Plaintiffs cannot prove a claim for false arrest or false imprisonment as these findings by the District Court conclusively negate required elements of the state law tort claims. Likewise, because there were valid warrants issued for Denzil Partin's arrest, as a matter of law there was no illegal trespass upon Plaintiffs' property. Given the District Court's specific finding that none of the officers used excessive force, Plaintiffs' claims for assault and battery also must fail.

All of the elements necessary to establish collateral estoppel have been met with regard to all of Plaintiffs' claims against all Defendants, regardless of whether those claims are premised upon state constitutional violations or state tort laws. Collateral estoppel prohibits re-litigating issues that already have been fully and fairly litigated. The very detailed and thorough opinion of the District Court effectively precludes Plaintiffs from re-litigating the identical factual issues in this case. The factual findings by the District Court establish that Defendants are entitled to summary judgment on all of Plaintiffs' state law tort claims. If Plaintiffs disagreed with the result reached by the District Court, they could and should have filed a timely appeal from that judgment, but they did not.

The next issue is whether the Trial Court erred when it denied Plaintiffs' motion for additional time to take discovery and respond to the summary judgment motions. Plaintiffs correctly note that it is within the Trial Court's discretion whether to extend the deadlines imposed by Tenn. R. Civ. P. 56. *See Curtsinger v. HCA, Inc.*, No. M2006-00590-COA-R3-CV, 2007 WL 1241294, at *5 (Tenn. Ct. App. Apr. 27, 2007), *perm. app. denied Sept. 17, 2007* ("[R]elief from the deadlines imposed by the Tennessee Rules of Civil Procedure rests soundly within the discretion of the trial court.")(citing *Kenyon v. Handal*, 122 S.W.3d 743, 753 (Tenn. Ct. App. 2003)).

Plaintiffs concede in their brief that their September 26, 2007, motion for additional time to complete discovery, and their October 10, 2007, Tenn. R. Civ. P. 56.07 motion for additional time to take discovery and respond to the motion for summary judgment are not in the record before us on appeal. While Plaintiffs attached to their briefs what purports to be copies of these motions, they nevertheless are not part of the technical record on appeal and will not be considered by this Court.

Apparently recognizing the problem created by not having these necessary motions in the record, on the day of oral argument Plaintiffs filed a motion to supplement the record with the two missing motions. However, counsel for Plaintiffs conceded that at least one wrong motion had been attached and indicated that a corrected motion to supplement the record would be filed. Three days after oral argument, a corrected motion was filed. Attached to the corrected motion is what purports to be the two missing motions. However, neither of the copies of these motions attached to Plaintiffs' corrected motion has a stamp from the Campbell County Circuit Court which would indicate that these actually are copies of any motions that were filed there. In the absence of such a stamp, this Court would have to remand this case back to the Trial Court to authenticate the motions that are attached to the corrected motion. In addition, Defendants would need time to

supplement their briefs to address the fact that these formerly missing motions, if these are those missing motions, are now in the record. This is reason enough to deny the motion to supplement the record.

Notwithstanding the foregoing, we note that according to the unauthenticated motions supplied by counsel for Plaintiffs, the reason Plaintiffs needed additional time to respond to Defendants' motions for summary judgment was twofold. First, Plaintiffs' counsel mistakenly thought that the depositions had been transcribed when in fact they had not. Second, Plaintiffs' counsel needed more time because he had been allowed to intervene in a case filed in Knox County which needed his immediate attention. Even if we accept that the motions filed with this Court post-oral argument are indeed the missing motions filed by Plaintiffs, we would be unable to conclude that the Trial Court abused its discretion when it denied the motions. Counsel should not have intervened in the Knox County case if doing so meant that he would be unable to timely and adequately prepare other pending cases of his such as this case.

Most importantly, however, is the fact that Plaintiffs requested additional time to submit depositions, etc., of the various Defendants on issues which Plaintiffs were collaterally estopped from pursuing. In other words, even if the motions for additional time had been granted, the ultimate result in this case would be the same because the additional proof Plaintiffs sought to introduce all pertained to matters which had fully and fairly been litigated in District Court and found adverse to Plaintiffs. Accordingly, even if the Trial Court should have granted Plaintiffs additional time, Defendants still would have been entitled to summary judgment. Therefore, the error, if any, was harmless. Based on the foregoing, we deny Plaintiffs' motion to supplement the record, and we affirm the judgment of the Trial Court on this issue.

Having determined that the Trial Court correctly granted summary judgment to all Defendants, the remaining issues raised by Defendants are rendered moot, and those issues are pretermitted.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court solely for collection of the costs below. Costs on appeal are taxed to the Appellants, Denzil Russ Partin and Mary Ava Partin, and their surety, for which execution may issue.

D. MICHAEL SWINEY, JUDGE